facts of that case are identical to the issues raised by AT&T in its Informal Complaint against the *Collection Action* Plaintiffs. As described in the Commission's Order, Jefferson Telephone was a rural ILEC based in Iowa, which entered a commercial agreement with International Audiotext Network ("IAN"), a provider of chat line services. IAN "[marketed] and otherwise [aided] the chatline operations" and Jefferson made payments to IAN "based on the amount of access revenues that Jefferson received for terminating calls to IAN."[16]

AT&T's complaint charged that Jefferson violated § 201(b) of the Communications Act because it "acquired a direct interest in promoting the delivery of calls to specific telephone numbers" and because its "access revenue-sharing arrangement with IAN" violated § 202(a) of the Act.[17] The Commission rejected AT&T's arguments and denied its complaint, stating that:

> "Jefferson provided interstate access service at the same rate to all IXCs who ordered it pursuant to a tariff filed with the Commission. Moreover, Jefferson provided terminating interstate access service with respect to calls placed to all of the telephone numbers in Jefferson's exchange, not just to those numbers assigned to IAN.[18] * * * For these reasons, we find that AT&T has not demonstrated that Jefferson violated its duty as a common carrier upon entering the revenue-sharing arrangement with IAN."[19]

A copy of the *Jefferson* decision is appended to this Petition at Attachment 7.

The following year, the Commission issued two more orders, denying similar complaints by AT&T directed at ILECs that established commercial agreements with chat-line operators. In it's *Frontier* decision, the Commission rejected AT&T's allegations that "revenue-sharing arrangements" constituted unreasonable discrimination in violation of § 202(a) or violations of

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[16] *Id.* at 16131-2.
[17] *Id.* at 16133, at ¶ 5.
[18] *Id.* at 16135, at ¶ 6.
[19] *Id.* at 16136, at ¶ 11.

the ILECs' common carrier duties under § 201(b).[20] A copy of the *Frontier* decision is appended to this Petition at Attachment 8.

Finally, in *AT&T v. Beehive*,[21] the Commission again denied AT&T's complaint against a LEC that engaged in a commercial relationship with a chat-line provider. A copy of the *Beehive* decision is appended to this Petition at Attachment 9. In this case, AT&T focused on a revenue-sharing arrangement between Beehive Telephone, Inc. and an information service provider called Joy Enterprises[22] – these are the same two parties that AT&T repeatedly complains about in its Informal Complaint against the *Collection Action* Plaintiffs.[23] Not only is AT&T raising the identical issues that have been rejected three times by this Commission, by expressly raising these claims against the same parties named in the *Beehive* decision, AT&T is effectively seeking reconsideration of the *Beehive* decision seven years after its issuance.

Of course, AT&T does not mention this line of cases in its Informal Complaint, and does not even attempt to distinguish them.[24] Indeed, the Commission's repeated and unequivocal rejection of AT&T's complaints against LECs that team with chat-line operators is the reason AT&T now prefers to employ illegal self-help by refusing to pay the LECs' lawfully billed access charges, rather than seek the lawful remedies available to it through the Commission's 208 complaint process. Given the weight of Commission precedent adverse to its position, there can be no question that the only reason AT&T now brings a complaint before this Commission is because it was forced to by the SDNY Court's referral.

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[20] *AT&T Corp. v. Frontier Commcn's of Mt. Pulaski, Inc.*, 17 FCC Rcd at 4041-42, ¶¶ 1, 2 (2002).
[21] *AT&T v. Beehive Tel. Co.*, 17 FCC Rcd 11641 (2002).
[22] *Id.* at 11644, ¶ 6, 14.
[23] Informal Complaint at 4 & 14 (Joy Enterprises), and at 2-18, 20, 23-25 (Beehive).
[24] AT&T includes a reference to the Beehive decision (complaint at 3 n.2), but neglects to mention that the Commission ruled against AT&T and in favor of Beehive in that decision.

B. THE COMMISSION'S RECENT DECISION IN *QWEST V. FARMERS & MERCHANTS* RECONFIRMS THE COMMISSION'S LONGSTANDING REJECTION OF THE "SHAM ENTITY" ARGUMENT

The most recent decision in the Commission's line of cases dealing with LECs that establish commercial agreements with conference service and chat-line operators was issued last October in *Qwest v. Farmers & Merchants.*[25] In that case, Qwest filed a formal complaint, asking the FCC to find that "traffic pumping schemes" — in which a rural LEC partnered with conference and chat operators in order to generate access traffic, and access revenues, and paid the conference and chat operators a commission based on these access revenues – violated the Communications Act. The FCC rejected Qwest's arguments, finding:

- "Farmers did not violate Sections 203 or 201(b) of the Act by imposing terminating access charges on traffic bound for conference calling companies."[26]
- "Qwest also argues that Farmers' tariff does not allow Farmers to assess terminating access charges on calls to the conference calling companies. . . . The record indicates, however, that the conference calling companies *are* end users as defined in the tariff, and we therefore find that Farmers' access charges have been imposed in accordance with its tariff."[27]
- "We find that Farmers' payment of marketing fees to the conference calling companies does not affect their status as customers, and thus end users, for purposes of Farmers' tariff. . . . The question of whether the conference calling companies paid Farmers more than Farmers paid them is thus irrelevant to their status as end users."[28]
- "Qwest has failed to prove that the conference calling company-bound calls do not terminate in Farmers' exchange, and has failed to prove that Farmers' imposition of terminating access charges is inconsistent with its tariff." *Id.* at 17987, ¶ 39.

Qwest has sought reconsideration of the FCC's ruling, and that reconsideration process remains pending. A copy of the *Qwest v. Farmers* decision is appended to this Petition at Attachment 8.

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[25] *Qwest Commc'ns Corp. v. Farmers and Merchants Mutual Tel. Co.*, 22 FCC Rcd 17973 (Oct. 2, 2007).
[26] *Id.* at 17985, ¶ 30.
[27] *Id.* at 17987, ¶ 35 (emphasis in original).
[28] *Id.* at 17987, ¶ 38.

The line of cases addressing the commercial relationships between LECs and chat-line and conference operators has found that such arrangements do not violate the Communications Act consistently over a decade. As discussed in the next section, AT&T has failed to produce any Commission decisions that support its claims that the *Collection Action* Plaintiffs' conduct is unlawful and that Plaintiffs' tariffed rates are inapplicable. This is not an oversight on AT&T's part, rather AT&T cannot provide precedential support for its arguments because none exists – all of the existing Commission precedent has been decided against AT&T's position.

C. THE ONLY CASE THAT AT&T CITES AS AUTHORITY IN SUPPORT OF ITS CLAIMS IS DEMONSTRABLY INAPPOSITE, AND IN FACT SUPPORTS PETITIONERS' CASE

AT&T's Informal Complaint consists of 26 pages. It cites **one** case in support of its claims – *Total Telecomms.*[29] This is the one instance in which the Commission found a CLEC to have been created as a "sham entity." However, as discussed below, that finding was made in a case of rate arbitrage that existed in the mid and late 1990s. However, in 2001, the Commission established a new rate regulatory regime that closed the arbitrage loophole. As a result, it is simply no longer possible to establish the type of "sham" entity found in the *Total* case, and the "sham entity" analysis conducted in *Total* is now irrelevant. A copy of the *Total* case is appended at Attachment 10.

1. *Total* was decided under a regulatory scheme that has subsequently been eliminated, and so is irrelevant to the case at bar.

AT&T correctly characterizes the facts of the *Total* case: The Atlas Telephone Company was an incumbent LEC whose access charges were regulated by the Commission. Atlas spun off Total Telecommunications Services, Inc., a Competitive LEC, whose rates were not regulated by the Commission, and used that company to charge access rates that were higher than the

[29] *Total Telecomms. Servs., Inc. and Atlas Tel. Co.*, 16 FCC Rcd 5726 (2001).

regulated access rates that Atlas could charge. Moreover, Total contracted with, and shared access revenues with, Audiobridge (a chat-line operator) for its role in generating large volumes of traffic. Total was founded in 1995. AT&T began blocking calls to Total and refusing to pay invoiced access charges. Atlas and Total filed a complaint against AT&T in 1995, and the Commission issued is order resolving that complaint in March, 2001.

In April 2001, the Commission concluded a year-long inquiry into access charges set by unregulated competitive LECs ("CLECs"), and issued its *CLEC Access Charge Order*, which for the first time regulated CLEC access rates.[30] In so doing, the Commission expressly cited the *Total* case as an example that the unregulated status of CLEC access charges had led to "an arbitrage opportunity for CLECs to charge unreasonable access rates."[31]

The FCC's new regulatory policy – expressly designed to prevent the type of rate abuse the Commission found in the *Total* case – eliminated the arbitrage opportunity by requiring that CLECs mirror the rates of the regulated incumbent LECs ("ILECs"). By doing so, it ensured that both ILECs and CLECs that served the same area had to charge the same rates, and so eliminated the incentive for ILECs to spin off sham CLECs in order to charge higher rates.[32] The Commission therefore closed the *Total* loophole eight years ago, and the *Total* case "sham entity" inquiry is no longer relevant under today's regulatory structure.

2. The FCC's recent *Farmers & Merchants* decision expressly rejected arguments that the *Total* case is relevant to disputes like AT&T's Informal Complaint

The Commission has recently rejected arguments by Qwest that are based on an interpretation of the *Total* case that is identical to the one put forth by AT&T in its Informal Complaint. In its *Farmers & Merchants* decision, the Commission rejected the Qwest legal

[30] *Access Charge Reform*, 16 FCC Rcd 9923 (April 27, 2001) ("*CLEC Access Charge Order*").
[31] *Id.* at 9936, ¶ 34, n.82 (citing *Total*).
[32] *Id*, at 9936-51 ¶¶ 35-64

analysis of *Total*, stating that: "Consequently, the [*Total*] decision relied on by Qwest (finding that certain conduct by an IXC toward a competitive access provider ("CAP") was established as a sham entity) is not dispositive."[33] This further supports the *Collection Action* Plaintiffs' argument that they type of party-specific adjudication and related discovery that AT&T is seeking is irrelevant.

3. The "sham entity" finding in the *Total* case involved the relationship between the ILEC and the CLEC, not any relationship between either LEC and the chat-line provider Audiobridge

The *Total* case describes at length the revenue-sharing arrangement between Total Telecommunications and Audiobridge, its chat-line operator customer: "Audiobridge obtains all of its revenues from Total. . . ."[34] "Total would pay Audiobridge commission payments of 50 to 60 percent of Total's terminating access revenues from calls completed to Audiobridge."[35]

In response to the *Total* and Atlas complaint, AT&T filed six cross-complaints. None of the cross-complaints raised any issue of impropriety regarding *Total's* dealings with Audiocom; rather, AT&T's entire case focused on the relationship between Atlas, the ILEC and *Total*, the CLEC.[36] As a result, *Total* provides no support for AT&T's assertion that it should be allowed to conduct "sham entity" discovery regarding the *Collection Action* Plaintiffs' chat-line and conference operator customers.

4. The *Total* case stands for the proposition that AT&T cannot refuse to pay access charges for calls to chat-line providers, even if a sham entity is found to exist

While AT&T is correct that the Commission in the *Total* case found the existence of a sham entity, AT&T's inference that such a finding absolves it of paying access charges is

[33] *Farmers & Merchants*, 22 FCC Rcd at 17973, ¶ 27 & n.98.
[34] *Total Telecomms.*, 16 FCC Rcd at 5729, ¶¶ 5, 7.
[35] *Id.* at 5729, ¶ 7.
[36] *See id.* at 5732, ¶ 13.

demonstrably false. In the *Total* decision, the Commission ruled:

> We reject AT&T's argument that the unlawful relationship between Atlas and Total, in and of itself, makes it unreasonable for Total to charge anything for the access services provided to AT&T. Complainants did provide a service to AT&T, *i.e.*, completing calls from AT&T's customers to Audiobridge. Moreover, AT&T recovered revenue through ordinary long-distance rates from its own customers for calls completed to Audiobridge. Finally, Complainants may not be able to recover their legitimate costs, if any, through other means, that they are entitled to recover. Therefore, Total's unlawful relationship with Atlas, standing alone, does not preclude Complainants from charging "reasonable" access charges from AT&T. * * * Given the particular circumstances of this case, we conclude that a reasonable access charge is the fee that Atlas would have charged AT&T for terminating traffic directly to Audiobridge, had Total never existed.[37]

Therefore under the only precedent cited by AT&T, the type of "sham entity" inquiry AT&T wishes to pursue is only a means of determining the appropriate access rate that applies. But this has already been established definitively by the Commission in its 2001 *CLEC Access Charge Order* – CLECs whose tariffed access charges match those tariffed by the ILEC in their same service area are "conclusively deemed reasonable".[38] No "sham entity" inquiry is necessary because the lawful rates have already been established as a matter of law, and in any case, AT&T is not contesting the Petitioners' tariffed rates in its Informal Complaint.

As a result, a sham entity inquiry has no purpose, because it cannot support the outcome sought by AT&T – AT&T seeks to void the *Collection Action* Plaintiffs' tariffs *ab initio*, and to obtain Commission absolution from its obligation to pay lawfully tariffed access charges. But the *Total* case does not support such an outcome – indeed, it stands for the opposite proposition – that reasonable access charges must be paid when calls terminate to chat-line providers. And the fact that Petitioners' tariffed access rates are "conclusively deemed reasonable" has not been

[37] *Id.* at 5742, ¶¶ 37 (footnotes deleted).
[38] *Access Charge Reform*, 16 FCC Rcd 9923 at 9948, ¶ 60 ("*CLEC Access Charge Order*").

contested by AT&T.

D. AT&T's Complaint Is So Patently Lacking in Merit Because Its Sole Purpose Is to Abuse the Regulatory and Litigation Process in Order to Extend Its Campaign of Unlawful Self-Help Against Its Competitors

As noted above, the AT&T Informal Complaint is absolutely devoid of any precedential support for its claims, and instead presents undisciplined invective and outlandish and unsupportable claims. AT&T certainly knows better – besides being sophisticated in telecom regulatory and litigation matters, AT&T was a party to most of the cases that establish the precedent adverse to its position. Why then would AT&T waste this Commission's time and resources with a filing that is so patently lacking in merit?

The answer is that AT&T knows it has no hope of winning its argument – either before this Commission or before the SDNY Court. Instead, AT&T's purpose is to abuse the regulatory process and the inherent delay in federal court litigation to pursue an unlawful and brutally effective campaign of self-help against small rival companies.

There is no subtlety to AT&T's plan – it simply stopped paying the *Collection Action* Plaintiffs' access invoices more than three years ago.[39] Under the current law, victims of self-help refusals to pay must pursue collection actions in federal district court.[40] The *Collection Action* Plaintiffs filed their complaint against AT&T in March, 2007, and AT&T has used the Court's rules of procedure to prevent a judgment in that case until the end of this year – under the current procedural schedule, dispositive motions may be filed in October, 2009 At the same time, AT&T has pursued baseless litigation against the *Collection Action* Plaintiffs – similar to

[39] AT&T stopped paying ChaseCom in February 2006, and All American and e.Pinnacle in May 2006. See *Collection Action* Complaint, Attachment 1, at 44.

[40] *E.g., U.S. Telepacific Corp. v. Tel-American of Salt Lake City, Inc.*, 19 FCC Rcd 24552, at 24555-6 ¶ 8 (2004) ("[t]he proper forum for [recovery of unpaid access charges that are allegedly due under the terms of a federal tariff] . . . is the federal district court.")

its Informal Complaint before this Commission – in other venues, including federal district court for the Southern District of Iowa and the Utah Public Service Commission. This approach puts the *Collection Action* Plaintiffs in a revenue/cost squeeze – while AT&T is unlawfully refusing to pay their access charges, it is imposing significant legal costs on them through harassing litigation in multiple forums.

As noted, this strategy is crude but effective – AT&T has already driven e.Pinnacle out of business. For ChaseCom, whose initial claim in its *Collection Action* was $60,000, the cost of defending against AT&T's baseless attacks clearly exceeds the amount that can be recovered.

And, as the list of cases in Section II(B) above illustrates, AT&T is pursuing this same unlawful campaign against dozens of LECs and conference and chat-line operators across the country.

The Commission has long been aware of AT&T's penchant for relying on unlawful self-help as a means of gaining leverage in access disputes with smaller carriers, despite repeated findings that AT&T has violated Section 201(b) of the Communications Act in doing so.[41] Indeed, in 2001, the Commission took the major step of regulating CLEC access charges – a competitive sector of the industry that was previously unregulated. However, the FCC was convinced that such dramatic action was necessary to put a stop to what had seemed like an endless round of litigation and intercarrier disputes over access charges. The Commission expressly found that its new regulatory regime was intended to stop AT&T from pursuing a campaign of illegal self-help against LECs by refusing to pay access charges:

> Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. . . .

[41] *MGC Communications, Inc. v. AT&T Corp.*, 15 FCC Rcd 308 (1999); *CLEC Access Charge Order*, 16 FCC Rcd at 9932, ¶ 23; *see Business WATS, Inc. v. American Tel. and Tel. Co.*, 7 FCC Rcd 7942 (1992).

> AT&T . . . has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. . . . We are concerned that the IXCs appear to be routinely flouting their obligations under the tariff system. Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute. This uncertainty, in turn, poses a significant threat to the continued development of local-service competition, and it may dampen CLEC innovation and the development of new product offerings.[42]

Eight years after this Commission finding, AT&T is still flouting its obligations under the tariff system, and resorting to self-help in the first instance as a means of exerting market discipline and intimidating competitors, or driving them out of business. This Commission cannot do anything about the inherent delays in federal court litigation. But it can refuse to be a party to AT&T's continuing abuse of the regulatory and litigation process by issuing a Declaratory Ruling that reiterates longstanding Commission decisions and policies and shuts down a meritless line of argument that has been the lead tactic in AT&T's campaign of self-help and harassing litigation.

IV. MISCELLANEOUS RESPONSES TO ISSUES RAISED IN THE AT&T INFORMAL COMPLAINT

Because this Petition for Declaratory Ruling also serves as an answer to the AT&T Informal Complaint against the *Collection Action* Plaintiffs, a brief response to miscellaneous averments made by AT&T is provided below.

[42] *CLEC Access Charge Order*, 16 FCC Rcd at 9932, ¶23.*Id.* at ¶ 23 (citations omitted, emphasis added).

A. AT&T KNOWINGLY MISCHARACTERIZES THE PROCEDURAL STATUS OF THE *COLLECTION ACTION*

AT&T avers that, when it "asked for additional information about their operations, the CLECs [*Collection Action* Plaintiffs] refused to provide responses to much of the requested discovery." Informal Complaint at 19. Aside from the fact that this is irrelevant to any prospective action before this Commission, AT&T is fully aware that discovery in the *Collection Action* was stayed until April of this year. AT&T has never filed a motion to compel discovery in the *Collection Action.*

B. THE REASON E.PINNACLE'S STATE CERTIFICATE HAS BEEN CANCELLED IS THAT AT&T'S UNLAWFUL CAMPAIGN OF SELF-HELP REFUSAL TO PAY ACCESS CHARGES HAS DRIVEN THE COMPANY OUT OF BUSINESS

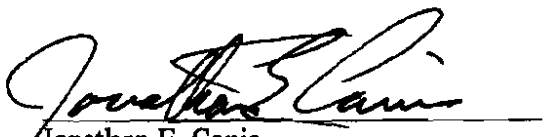
AT&T correctly states that e.Pinnacle certificate of public convenience and necessity has been cancelled by the Utah Public Service Commission, and that AT&T's notices to e.Pinnacle's "last known address had not been answered or returned." Informal Complaint at 11. This is true because AT&T has succeeded in driving e.Pinnacle out of business, which was from its inception the purpose of AT&T's campaign of unlawful self-help. By unlawfully withholding payments of validly tariffed charges for access services that AT&T took from e.Pinnacle and many other carriers, AT&T is using its power as the country's largest telephone carrier to harm and intimidate its competitors.

V. CONCLUSION

For the reasons discussed above, All American Telephone Company, Inc., e.Pinnacle Communications Inc. and ChaseCom request that the Commission respond to the referral of the "sham entity" question by the Federal District Court for the Southern District of New York by

issuing a Declaratory Ruling. Petitioners further request that the Declaratory Ruling reiterate the finding that the Commission has already made on five separate occasions – that commercial agreements between LECs and conference and chat-line operators and international calling services do not violate § 201(b) of the Communications Act and do not void the LECs' tariffs.

Respectfully submitted,



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Dated: May 20, 2009

CERTIFICATE OF SERVICE

I, Michele Depasse, do hereby certify that on May 20, 2009, I caused true and correct copy of the foregoing PETITION FOR DECLARATORY RULING OF ALL AMERICAN TELEPHONE CO., INC., e-PINNACLE COMMUNICATIONS, INC. AND CHASECOM TO RECONFIRM THAT LOCAL EXCHANGE CARRIER COMMERCIAL AGREEMENTS WITH PROVIDERS OF CONFERENCINGG, "CHAT LINE" AND OTHER SERVICES DO NOT VIOLATE THE COMMUNICATIONS ACT" to be hand delivered to the parties listed below:

Michael J. Copps, Acting Chairman
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Robert M. McDowell, Commissioner
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Jennifer Schneider
Legal Advisor to Acting Chairman Copps
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Mark Stone
Legal Advisor to Commisier Adelstein
Federal Communications Commission
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Nicholas Alexander
Legal Advisor to Commissioner McDowell
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Alexander Starr, Chief
Market Disputes Resolution Division
Federal Communications Commission
445 – 12th Street, S.W.
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Rosemary McEnery, Deputy Chief
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James F. Bendernagle, Jr. (also via fax&email)
David L. Lawson
Michael J. Hunseder
Sidley & Austin, LLP
1501 K Street, N.W.
Washington, DC 20005

Michele A. Depasse

RPP/314599.1

ATTACHMENT 1

[Complaint of the *Collection Action* Plaintiffs Against AT&T in SDNY]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALL AMERICAN TELEPHONE COMPANY, INC., a Nevada corporation, CHASECOM, a California corporation, e-PINNACLE COMMUNICATIONS, INC., a Utah corporation, GREAT LAKES COMMUNICATION CORP., an Iowa corporation,	Civil Action No. 07-861
Plaintiffs,	FIRST AMENDED COMPLAINT
	JURY TRIAL DEMANDED
v.	
AT&T Corp., a New York corporation,	
Defendant.	

FIRST AMENDED COMPLAINT

Plaintiffs All American Telephone Company, Inc., ChaseCom, e-Pinnacle Communications, Inc., and Great Lakes Communication Corp., by their attorneys, Kelley Drye & Warren LLP, bring this Complaint against Defendant AT&T Corp. ("AT&T" or "Defendant") and allege as follows:

NATURE OF THE ACTION

1. This is a collection action arising from Defendant's refusal to pay legally required fees, known as "access charges," for its use of Plaintiffs' local network services to complete long distance calls. AT&T has deliberately flouted its legal obligations, which arise under lawfully-filed tariffs, established case law, the Communications Act of 1934, as amended (the "Act") and the Federal Communications Commission's ("FCC" or "Commission") implementing rules and policies, to pay almost $4 million for services that it undisputedly received from the Plaintiffs.

2. AT&T's self-help campaign violates the "filed rate doctrine" and associated FCC decisions, which require all communications carriers and their customers to pay rates contained in tariffs filed with the FCC. Settled FCC orders prohibit carriers from engaging in self-help by refusing to pay tariffed rates. AT&T's unlawful self-help also violates state statutes and applicable regulatory requirements of the Iowa Utilities Board ("IUB"). Rather, if AT&T has any legitimate complaint against Plaintiffs – and it does not – relief is lawfully available to it through the dispute resolution provisions of Plaintiffs' tariffs and the formal complaint process (47 U.S.C. § 208) at the FCC, and the complaint process (Iowa Code § 476.3) of the IUB. By choosing not to avail itself of either of these means of resolving disputes, but instead simply refusing to pay Plaintiffs for the services it has taken from them, AT&T is plainly engaging in unlawful conduct that has inflicted significant, and ongoing, harm to Plaintiffs.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to: (a) 28 U.S.C. § 1331, because Plaintiffs' claims arise under the Communications Act; (b) 28 U.S.C. § 1332, because the parties are citizens of different states and the amount in controversy exceeds

$75,000; and (c) 47 U.S.C. § 207, which vests the district courts with jurisdiction to hear suits seeking monetary damages under the Communications Act. This Court has supplemental jurisdiction of Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

4. This Court's jurisdiction over collection actions such as this has been conferred in decisions such as in *U.S. Telepacific Corp. v. Tel-American of Salt Lake City, Inc.*, 19 FCC Rcd 24552 (2004), ¶ 8, in which the Commission concluded that "[t]he proper forum for recovery of unpaid access charges that are allegedly due under the terms of a federal tariff . . . is the federal district court." *See, Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd 4826 (2005), n.58 ("[t]he Commission has held that it does not act as a collection agent for carriers with respect to unpaid tariff charges").

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because AT&T does business in this judicial district and is thus subject to personal jurisdiction in this district.

PLAINTIFFS

6. Plaintiff ALL AMERICAN TELEPHONE COMPANY, INC. ("All American") is a Nevada corporation with its principal place of business in Las Vegas, Nevada. It is a competitive local exchange carrier ("CLEC") that provides interstate and intrastate exchange access service, as well as local, long-distance and enhanced services, to business and residential customers in several rural areas in the United States.

7. Plaintiff CHASE COM ("Chase Com") is a California corporation with its principal place of business in Santa Barbara, California. It is a competitive local exchange carrier ("CLEC") that provides interstate and intrastate exchange access service, as well as local, long-distance and enhanced services, to business and residential customers in Utah and other rural areas in the United States.

8. Plaintiff e-PINNACLE COMMUNICATIONS, INC. ("e-Pinnacle") is a Utah corporation with its principal place of business in Provo, Utah. It is a competitive local exchange carrier ("CLEC") that provides interstate and intrastate exchange access service, as well as local, long-distance and enhanced services, to business and residential customers in Utah and other rural areas in the United States.

9. Plaintiff GREAT LAKES COMMUNICATION CORP. ("Great Lakes") is an Iowa corporation with its principal place of business in Spencer, Iowa. It is an competitive local exchange carrier ("CLEC") that provides interstate and intrastate exchange access service, as well as local, long-distance and enhanced services, to business and residential customers in Iowa.

DEFENDANT

10. Defendant AT&T Corp. ("AT&T") is a New York corporation with its principal place of business in Bedminster, New Jersey. At all relevant times, AT&T provided, and provides, services in this judicial district and its common carrier lines ran, and run, through this judicial district. AT&T is an interexchange carrier ("IXC") and a common carrier subject to the provisions of the Communications Act. 47 U.S.C. §151 *et seq.*

BACKGROUND

A. THE ACCESS CHARGE REGIME

11. Plaintiffs and AT&T are telecommunications common carriers, and their interstate service offerings are subject to the jurisdiction of the FCC.

12. Plaintiffs are local telephone companies that provide local and long-distance telephone services in their service territories. They are known as "competitive" local exchange carriers because they provide a competitive alternative to "incumbent" local exchange

carriers, which have historically have been monopoly providers of local services in the communities they serve.

13. At all times relevant to this complaint, AT&T has been a provider of long-distance telephone service, also known as an "interexchange carrier" or "IXC." As such, AT&T provides service that enables a customer in one locality to make a telephone call to another person in a distant location. Because this long-distance service involves connecting a calling party in one local service area, or "telephone exchange area," with a called party in another local telephone exchange area, the service AT&T provides is known in the telecommunications industry as "interexchange" service.

14. Since its mergers with SBC Communications Inc. and BellSouth Corporation, AT&T also provides local telephone service, and in doing so, is classified as an incumbent local exchange carrier, or ILEC, in the local markets that those companies serve. However, this complaint refers exclusively to unlawful actions that AT&T has enjoyed in its capacity as an IXC.

15. Outside of the local service areas of the former SBC and BellSouth, the long distance network of AT&T (like other IXCs) does not extend to the so-called "last mile" to end-user customers' homes or businesses. In contrast, local exchange carriers, including Plaintiffs' CLEC operations, have extensive local telephone networks that extend the last mile to reach customers in the local exchanges that they serve. Plaintiffs – like all local exchange carriers – provide this service, which is known as "switched access service," to AT&T and other IXCs. In return, AT&T is required to pay "access charges" to the Plaintiffs for the services they provide in originating and terminating interexchange, long distance calls for AT&T.

16. Federal and state regulators have jurisdiction over the access charges that apply to any given interexchange call, depending upon whether the call is interstate or intrastate. If the call originates in one state and terminates in another state, the access charges that apply fall exclusively under the FCC's jurisdiction. The access charges that are the subject of this complaint reflect both interstate and intrastate traffic.

17. Prior to 2001, the FCC did not regulate CLEC access charges. In 2001, however, in its *CLEC Access Charge Order I*, the Commission modified its rules to regulate CLEC access rates by more closely aligning CLEC access rates with those of the incumbent LECs. The FCC established a "benchmark" or "safe harbor" at or under which CLEC access rates are presumed just and reasonable as a matter of law. *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, ¶¶ 3, 40-63 (2001) *("CLEC Access Charge Order I")*. *See also* 47 C.F.R. §61.26. Specifically, the Commission concluded that:

> [A]n IXC that refused payment of tariffed rates within the safe harbor would be subject to suit on the tariff in the appropriate federal district court, without the impediment of a primary jurisdiction referral to the Commission to determine the reasonableness of the rate. Similarly, because of the presumptive conclusion of reasonableness that we will accord to tariffed rates at or below the benchmark, a CLEC with qualifying rates will not be subject to a section 208 complaint challenging its rates. *Access Charge Reform Seventh Report and Order* ¶60.

18. The FCC initially set the benchmark at 2.5 cents per minute, or the competing incumbent's rate, whichever was higher. *Id.* ¶45. Under the FCC's plan, the benchmark declined over a three-year period until it reached the competing incumbent LEC's rate. *Id.* Currently, with a few limited exceptions, the benchmark rate is the rate of the competing incumbent LEC in the area served by the CLEC.

19. The FCC clarified certain aspects of its competitive access charge rules in 2004 as part of its *Eighth Report and Order*. In that order, the FCC determined *inter alia* that "a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users." *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 19 FCC Rcd 9108, ¶9 (2004) (*CLEC Access Charge Order II*). The Commission also held that "the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions." *Id.*

20. Intrastate access charges fall within the jurisdiction of the relevant state regulatory commission, in the instant case the Iowa Utilities Board. The IUB has not prescribed specific access charges for CLECs, but rather reviews tariff filings when made by carriers within its jurisdiction.

21. As is common practice in Iowa, Plaintiff Great Lakes has not filed its own intrastate access tariff, but rather has "concurred" in a tariff maintained by the Iowa Telecommunications Association ("ITA"). The Association boasts 153 incumbent and competitive telecommunications carriers within Iowa as active members, many of whom have adopted (or "concurred in") the ITA tariff. The ITA tariff has been effective in Iowa since the 1980s.

22. All Plaintiffs have interstate tariffed rates that are fully compliant with the FCC's benchmark rules.

B. THE FILED RATE DOCTRINE

23. The filed rate doctrine, also known as the filed tariff doctrine, is a common law construct that originated in judicial and regulatory interpretations of the Interstate

Commerce Act, and was later applied to the Communications Act. It has been applied consistently to a variety of regulated industries for almost a century. The filed rate doctrine stands for the principle that a validly filed tariff has the force of law, and may not be challenged in the courts for unreasonableness, except upon direct review of an agency's endorsement of the rate. *E.g., Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 117 (1990); *Telecom International America, Ltd. v. AT&T Corp.*, 67 F. Supp. 2d 189, 216-17 (S.D.N.Y.1999); *MCI Telecommunications Corp. v. Dominican Communications Corp.*, 984 F.Supp.185, 189 (S.D.N.Y.1997).

24. The filed rate doctrine is motivated by two principles: it (1) prevents carriers from engaging in price discrimination between ratepayers and (2) preserves the exclusive role of federal agencies in approving "reasonable" rates for telecommunications services by keeping courts out of the rate-making process. *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2nd Cir. 1998). Thus, if a carrier acquires services under a filed tariff, only the rate contained in the tariff for that service will apply. The filed rate doctrine is applied strictly, and it requires a party that receives tariffed services to pay the filed rates, even if that party is dissatisfied with the rates or alleges fraud. *Marcus*, 138 F.3d at 58-59. Rather, a party seeking to challenge a tariffed rate must pay the rate in the tariff and then file a complaint with the FCC challenging the rate.

25. The FCC reaffirmed the filed rate doctrine and expressly applied it to CLEC access charges in its *CLEC Access Charge Order I*, explaining that "[t]ariffs require IXCs to pay the published rate for tariffed C[ompetitive] LEC access services, absent an agreement to the contrary or a finding by the Commission that the rate is unreasonable." 16 FCC Rcd 9923 ¶ 28.

26. All Plaintiffs currently have valid tariffs on file with the FCC. At all times relevant to this Complaint, all Plaintiffs had valid tariffs on file with the FCC.

C. AT&T HAS A LONG HISTORY OF UNLAWFUL SELF-HELP AGAINST SMALLER CARRIERS

27. Defendant has a long history of unlawfully engaging in self-help – it has repeatedly refused to pay small carriers for the access services it has purchased from them for at least the last eight years.

28. Beginning in late 1998, AT&T abruptly ceased paying access charges for services it took from a CLEC called MGC Communications, Inc. ("MGC"). AT&T had been taking MGC's service – and paying MGC's tariffed rates – for about the previous six months. MGC filed a formal complaint against AT&T before the FCC.

29. On July 16, 1999, the FCC's Common Carrier Bureau issued an order granting MGC full payment of its access charges, plus interest. *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999). In so doing, the agency held that:

> AT&T's refusal to pay for the originating access service that it has received since August 22, 1998, amounts to impermissible self-help and a violation of section 201(b) of the Act. We accordingly grant MGC's complaint in this matter and hold that AT&T is liable to MGC, at MGC's tariffed rate, for the originating access service that it received from August 22, 1998, through the date of this order. *Id.* at 11659.

30. AT&T sought reconsideration of the Common Carrier Bureau's decision, which was denied. In *MGC Communications, Inc. v. AT&T Corp.*, 15 FCC Rcd 308 (1999), the FCC affirmed the Common Carrier Bureau's decision in all respects. Furthermore the Commission found as a formal matter that AT&T's conduct was motivated by its desire to maintain the status quo while it attempted to negotiate reductions to MGC's access rates. *Id.* at 309.

31. Despite the FCC's unequivocal statement of the law and its policies prohibiting self-help refusals to pay access charges, AT&T actually amplified its unlawful conduct. In late 1998, AT&T initiated a campaign in which it illegally withheld access charge payments from dozens of CLECs – virtually the entire industry of competitive local exchange carrier industry – ultimately denying payment of hundreds of millions of dollars. This action spawned a series of CLEC complaints before federal courts that ensued over the next three years.

32. The first of those actions was before the U.S. District Court for the Eastern District of Virginia in *Advamtel, L.L.C. d/b/a Plan B Communications et al. v. AT&T Corp.*, No. 00-643-A. The second action resulting from AT&T's unlawful self-help efforts was a class action before the U.S. District Court for the District of Columbia, captioned *Conversent Communications, L.L.C. et al. v. AT&T*, No. 1:01-cv-01198.

33. In 2000, the judge in the *Advamtel* case referred two questions of law to the FCC, one of which was whether AT&T could lawfully refuse to carry traffic subject to access charges? *Advamtel, L.L.C. v. AT&T Corp.*, 105 F. Supp. 2d 507 (E.D. Va. 2000).

34. On October 22, 2001, the FCC issued a Declaratory Ruling responding to that case. While that ruling did not deal expressly with refusals to pay access charges, it did confirm that IXCs were not allowed to refuse to carry traffic out of an objection that the associated access rates were excessive: "[W]here rates charged for an access service are presumptively reasonable at the time the service is offered, an IXC cannot refuse to exchange originating or terminating traffic with the CLEC, because such a practice would threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network." *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, 16 FCC Rcd 19158, 19163 (2001).

35. Within five months of the issuance of the Commission's Declaratory Ruling, AT&T settled with all of the approximately 30 CLECs that were plaintiffs in the court actions in the Federal District Courts of the District of Columbia and the Eastern District of Virginia.

36. On June 14, 2002, the FCC's Declaratory Ruling was reviewed on appeal in *AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002). That ruling did not take issue with the Commission's policies against self-help and disruption of traffic, but rather vacated the Commission's unrelated interpretation of Section 201(b) of the Communications Act (47 U.S.C. §201(b)).

FACTS COMMON TO ALL PLAINTIFFS

Plaintiffs' Federal Access Tariffs

37. Plaintiffs provide interstate exchange access and other services in the United States under federal tariffs. These tariffs are validly filed with the FCC pursuant to Section 203 of the Act, 47 U.S.C. § 203.

38. Plaintiffs' tariffs have been in full force and effect during the time that Plaintiffs have been providing access services to AT&T.

39. All of the Plaintiffs filed their tariffs on at least one day's notice, pursuant to the FCC's streamlined tariff filing rule, 47 C.F.R. § 61.23(c).

40. Plaintiffs' tariffed interstate access rates are fully compliant with the FCC's "benchmark" regulations for CLEC access charges.

41. Pursuant to Plaintiffs' tariffs, the Plaintiffs have submitted invoices to Defendant for access charges associated with the access services they provided to Defendant.